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January 15, 2001

Ms. Gloria Blue  
Executive Secretary  
Trade Policy Staff Committee  
Office of the United States Trade Representative.  
600 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20508

**Re: Response in Connection with Inv. No. TA-201-73 (Certain Steel Products)**

Dear Madam Secretary:

On behalf of the NTN, USA, enclosed please find a response to comments regarding the actions that the President should take in connection with the above-referenced investigation.

These comments are filed pursuant to the United States Trade Representative's October 26, 2001 and December 28, 2001 Notices in the Federal Register (66 Fed. Reg. 54321 and 66 Fed. Reg. 67349, respectively). Please do not hesitate to contact us if you have any questions regarding this submission

NTN, USA ("NTN"), a U.S. bearing manufacturer, requests that the President exclude the following products from any remedy imposed in the above-referenced investigation.

1. **Bearing Quality Bar, ASTM A-534 and Special Bearing Quality Steel Bar ASTM A-535 (classifiable under HTSUS 7228.30.80.50)** - The specifications for this product were released publicly in NTN, USA's January 4, 2001 submission.
2. **SAE 52100 - Spherodized Annealed Wire Rod (classifiable under HTSUS 7227.90.20.30)** – The specifications for this product were released publicly in NTN, USA's January 4, 2001 submission.
3. **SAE 52100 Hot Rolled Wire Rod (classifiable under HTSUS 7227.90.10.30)** – The specifications for this product were released publicly in NTN, USA's January 4, 2001 submission.
4. **Hot Rolled Round Bar (SAE 1053 and SAE 1040) (classifiable under HTSUS 7214.99.00.30).** – The specifications for this product were released publicly in NTN, USA's January 4, 2001 submission.
5. **SBM40 (classifiable under HTSUS 7228..30.80.50)** – Public specifications will be provided upon obtaining the manufacturer's permission.

Any safeguard relief which included such products would be excessive and would cause substantial economic harm to U.S. purchasers, consumers, and workers without providing any benefit to domestic producers. The first four items listed above were objected to on the basis that full product specifications were not originally disclosed, and that the sole objecting party makes bearing quality steel. Since the specifications have been disclosed, there have been no objections registered of which we are aware.

While some members of the domestic industry have claimed to produce bearing steel, NTN has not been able to obtain the above-listed products from domestic producers or has not been able to obtain them in the qualities or quantities it requires. The fact that U.S. steel producers do not make all of the bearing steel required by U.S. bearing manufacturers is reflected in the number of exclusion requests for these products. NTN is currently aware of exclusion requests filed by NSK Corporation (represented by Lipstein, Jaffe & Lawson); INA, USA (represented by Arent Fox); various Japanese Respondents (represented by Willkie Farr &

Gallagher and Gibson, Dunn & Crutcher); Ovako Ajax, ISTIL Ltd.; Ascometal; Universal Bearings; and Thyssen Specialty Steels, as well as letters supporting exclusions for bearing steel or types of bearing steel filed by the American Bearing Manufacturers Association (ABMA), Brenco, Inc, Defiance, Inc, and Ohio Star Forge. In addition to its own exclusion requests, NTN fully supports these exclusion requests. As the American Bearing Manufacturers Association has stated in their submissions, “certain steel used in the manufacture of antifriction bearings are not readily available from U.S. steel producers at the specifications required by U.S. bearing producers.” The Association notes that “antifriction bearings operate under a wide range of challenging conditions. It is thus to be expected that the bearing steel specifications for any U.S. bearing producer will differ from those of another bearing producer and that the bearing steel specifications for one bearing type will differ from those of another bearing type depending on each bearings function.”

NTN does not accept the arguments of some domestic producers that exclusion requests should be denied because they allegedly “can” produce bearing steel. Like other respondents, we have been troubled by the vast number of exclusion requests in this 201 investigation which have elicited patently disingenuous, blanket opposition statements from domestic manufacturers, on the grounds that they “can” make the product, or they “would make the product, under the right conditions” or that they “might supply the product, if the price is right.” We are just as troubled by the apparent willingness of the Administration in reviewing such requests to look no further than whether the industry has opposed the request, as though political controversy were all that mattered in balancing the costs and benefits of safeguard protections. Perhaps it is assumed, as some domestic producers like to claim, that an over-quota tariff, or a short supply request will fill any need for product which is truly unique. Such reasoning not only ignores both the domestic

and international law, but imposes unnecessary inflationary costs on downstream users and consumers, as well as failing to help the part of the steel industries which are in need. In extreme cases, it unnecessarily causes the elimination of downstream U.S. manufacturing facilities, or transferral to offshore alternatives.

The Administration should not rely on claims that the domestic industry will make such steel “if the price is right” or if U.S. purchasers buy “sufficient quantities.” Where members of the domestic industry have merely provided unsubstantiated claims that they “can” make the product the product at issue, these claims should not serve as a basis for denying an exclusion request. The domestic industry should be required to show that they do make the product; that they have qualified to make the product; that they have experience in making the product; and that they could supply it immediately should import restrictions be imposed. As the ABMA has stated,

the fact that a steel producer may potentially demonstrate a capability to manufacture bearing steel for one U.S. bearing producer does not necessarily mean the steel it manufactures will meet the requirements demanded by another U.S. bearing producer. Similarly, the fact that a steel producer may be able to manufacture an early-state bearing steel product, does not mean there exists in the United States an ability to further process that early state product into the final product required by the U.S. bearing producer.

Furthermore, the Administration should require greater proof than the unsubstantiated claims of domestic producers. To date, NTN is unaware of any submissions by the domestic industry providing documentary evidence that they make the above-referenced products (except for one instance in which the producer is unwilling to manufacture the quantities required by NTN). To NTN’s knowledge no domestic producer has submitted records of sales of such products, information showing technical abilities to produce such products, or offers to sell such products. Exclusion requests should not be subject to veto by the domestic steel industry. As this

case was initiated by USTR and not by private petition, USTR must decide the appropriate scope of this investigation, not private parties.

The Administration should not give the domestic industry a veto over exclusion requests. Rather, a variety of criteria need to be considered when determining whether to grant an exclusion requests. The current short supply regulations (19 CFR Part 357) provide some of the criteria that should properly be considered when granting or denying exclusion requests, since they address most of the same concerns which come into play when a request for suspension of a remedial trade restriction is made. The regulations currently provide that the Secretary will not consider one factor alone to be dispositive, but will consider all relevant factors, including:

1. The recent levels of capacity utilization for domestic facilities producing the product or product sector;
2. The quantity of additional imports of the product requested by the petitioner and the ability of domestic producers to supply the product in such quantity;
3. The willingness of the producers of the product to supply the product at a price that is not an aberration from prevailing domestic market prices;
4. Reasonable specifications requested by the purchaser or any end user, such as metallurgical, dimensional, quality, service requirements, and supply only by a qualified supplier if such qualification is required by the purchaser's customers, and
5. Delivery times to the purchaser and to end users of the product.

All relevant factors need to be considered by the Administration and not simply whether the domestic industry objects, or whether they just “want” to make the subject product. Failure to consider such factors which results in the inclusion in the remedy of products not made in the United States or not made in sufficient qualities or quantities would lead to a trade restrictive remedy where the impact of such action exceeds the amount necessary to prevent or remedy the serious injury.”<sup>1</sup> This limitation is reflective of the WTO Agreement on Safeguards which

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<sup>1</sup> 19 U.S.C. § 2253(e)(2).

explicitly provides that a member may “apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment.”<sup>2</sup>

Under the statute, it is the President’s obligation to consider the effect of the implementation of any actions on consumers and on competition in domestic markets for articles.<sup>3</sup> In resolving the factual question of what domestic producers do make, the President should give more weight to the experience and testimonial statements of U.S steel purchasers, such as NTN, rather than to the unsubstantiated claims or desires of certain domestic producers (who may not even have the legal or economic standing to register the objection). The inclusion of such products in any import restrictions imposed would do far more harm to U.S. bearing producers, such as NTN, than it would provide benefits to the domestic steel industry which does not produce the products at issue. The inclusion of such products in any import restrictions would simply benefit foreign bearing manufacturers who will have access to the steel they need at the expense of U.S. bearing manufacturers who will not.

For the above stated reasons, NTN requests that the Administration exclude the above-referenced products from any remedy imposed by the President in Investigation TA-201-73.

Respectfully submitted,  
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<sup>2</sup>Agreement on Safeguards, Article 4(1).

<sup>3</sup> 19 U.S.C. §2253(2)(F)(ii).

